

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: 10/15/2020
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MPF SALES & MARKETING LLC,

Plaintiff,

-against-

BAKER'S PRIDE, INC.,

Defendant.  
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1:20-cv-04485-GHW

ORDER

GREGORY H. WOODS, United States District Judge:

Because Plaintiff has failed to serve Defendant in the time allotted by Federal Rule of Civil Procedure 4(m) and failed to show good cause for its failure to effect service, this action is dismissed without prejudice.

Plaintiff's complaint was filed on June 11, 2020. Dkt. No. 1. Plaintiff did not request a summons after filing this action. Federal Rule of Civil Procedure 4(m) states, in relevant part, that "[i]f a defendant is not served within 90 days after the complaint is filed, the court--on motion or on its own after notice to the plaintiff--must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period." As the complaint was filed on June 11, 2020, the ninety-day window for service closed on September 9, 2020. Plaintiff did not effect service by that date.

On September 16, 2020, the Court issued an order to show cause as to why this action should not be dismissed. Dkt. No. 11. In response, Plaintiff requested an extension of time to serve the complaint. Dkt. No. 12. The Court granted this request and extended the deadline for service to September 28, 2020. Dkt. No. 13. Plaintiff did not file proof of service on the docket by that date, nor did it provide the Court with a status update. Therefore, on October 12, 2020, two

weeks after the extended deadline for service, the Court issued an order to show cause as to why this action should not be dismissed and directed Plaintiff to respond by no later than October 14, 2020. Dkt. No. 14. On October 14, 2020, Plaintiff responded to the Court's order and noted that it had "kept the Court continually informed" and that there was no prejudice to Defendant as the matter is within the statute of limitations and appropriate for referral to mediation. Dkt. No. 15.

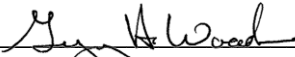
To be clear, the issue is that Plaintiff has failed to serve Defendant within the time allotted both under Rule 4(m) and the subsequent extension provided by the Court. Plaintiff has failed to provide an adequate showing of good cause as to why it should be granted another extension. Rather than providing an explanation for its failure to effect service, Plaintiff broadly cited "logistical challenges" "in part due to widespread government and industry imposed shutdowns of business offices and operations." *Id.* Furthermore, to date, Plaintiff has not requested the issuance of a summons.

Having long exceeded the 90 days allotted to effect service, MPF has failed to prosecute this case under Federal Rule of Civil Procedure 4(m). Accordingly, this case is dismissed without prejudice.

The Clerk of Court is directed to terminate all pending motions, adjourn all deadlines, and close this case.

SO ORDERED.

Dated: October 15, 2020  
New York, New York

  
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GREGORY H. WOODS  
United States District Judge